

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7571

BILL NUMBER: SB 520

NOTE PREPARED: Feb 19, 2009

BILL AMENDED:

SUBJECT: Specifications in Public Work Projects.

FIRST AUTHOR: Sen. Boots

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

For State Public Works Projects - The bill requires specifications for public works projects to be written to encourage free, open, and competitive bidding and refrain from calling for unique or proprietary materials.

The bill provides that a person who prepares, participated in the preparation of, or conferred any property on another person who prepared or participated in the preparation of the specifications of a public work project may not be awarded a contract for the public work project.

The bill requires that plans and specifications for a public work project with a cost of more than \$100,000 must be approved by a registered architect or engineer.

The bill provides that if the attendance of a bidder at a prebid meeting or conference is a condition to the acceptance of a bid from that bidder, that requirement must be published in the same fashion and for the same period as the board must advertise the date of receiving bids.

The bill requires the noncollusion affidavit submitted with a public work bid must be affirmed under the penalties for perjury and that the affidavit must affirm that the bidder did not violate the requirements for public work specifications.

The bill provides that a person who has certain responsibilities relating to the award of a public work contract who solicits, accepts, or agrees to accept any property from another person in return for an agreement to: (1) purchase or recommend the purchase of the other person's supplies, materials, or services with respect to a

public work project; (2) incorporate or recommend incorporation of the other person's supplies, materials, or services into specifications for a public work project; (3) award or recommend the award of a public work contract to that other person; or (4) recommend, promote, or endorse that person's supplies, materials, or services with respect to the public work project commits a Class D felony.

The bill provides that a person who offers, confers, or agrees to confer any property on a contract officer to do any of these acts commits a Class D felony.

The bill also provides that a person may not solicit, accept, or agree to accept any property in return for an agreement not to bid or compete on a public work project or to participate in an arrangement to suppress or eliminate full and unrestricted competition for the award of a public work contract commits a Class D felony.

It repeals a superseded statute and it makes other technical changes.

Effective Date: July 1, 2009.

Explanation of State Expenditures: The bill has indeterminate fiscal impact on public works contracting. To the extent that more bidders may be involved in the bidding process as a result of the requirements of the bill, contracts may be more competitive, and therefore, lower cost. However, to the extent that a person who helped with the specifications cannot bid on the project, planning costs may increase or expertise may be reduced. Also, the bill applies a requirement currently applying to local public works that a registered architect or engineer approve plans for projects over \$100,000 to the state. Finally, the bill could increase costs and revenues to the state and local units for three Class D felonies established under the bill.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances.

The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$69,223. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Background: The approval of registered architects or engineers is determined by the size and type of public works project under the 2006 International Building Code, which is adopted as law by administrative rule of the Fire Prevention and Building Safety Commission.

Explanation of State Revenues: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and

the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; DOC.

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